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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,888	03/04/2002	David F. Bantz	YOR920010527US1	6489
29683	7590	02/23/2005	EXAMINER	
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2643	
DATE MAILED: 02/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,888

Applicant(s)

BANTZ ET AL.

Examiner

Suhan Ni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) 30-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendment dated 10/12/2004.
2. Newly submitted claims 30-40 directed to an invention that is independent or distinct from the invention **originally claimed**. Since applicants already have received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30-40 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14 and 23-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julstrom et al. (U. S. Pat. - 6,694,034).

Regarding claim 1, Julstrom et al. disclose a system (201) for adjusting audio output, comprising: a transmitter unit (205) adapted to be carried by a user, the transmitter unit comprising a memory (219) and a signal transmitter (216); and an entertainment sound generating system (203) comprising a sound generator (207) adapted to output entertainment sound signals based upon input entertainment data (207), a signal receiver (209), means (212) for altering the entertainment sound signals from the sound generator based upon a signal

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transmitted by the transmitter to the receiver, and at least one acoustic transducer (208) coupled to the altering means. But Julstrom et al. do not clearly teach that the sound generator comprises a player adapted to play the entertainment data as claimed. Since Julstrom et al. do not specially restrict the kind of signals which the sound generator generates, and providing an audio player, such as CD player, or MP3 player to the hearing aid (203) user is very well known in the art. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a player to the user of the hearing aid as an alternate choice, in order to provide desirable entertainment, such as music, to the hearing aid user.

Regarding claims 2-6, Julstrom et al. further disclose the system for adjusting audio output, wherein the memory (219) comprises hearing information regarding a user's auditory characteristics and the memory comprises a nonvolatile memory and other inherently included structure as claimed.

Regarding claims 7-8, Julstrom et al. further disclose the system for adjusting audio output, wherein the altering means comprises a processor (212) connected to the signal receiver and the sound generator.

Regarding claims 9-11, Julstrom et al. do not clearly teach a second signal channel as claimed. Since providing a second sound channel for a hearing device is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable second audio channel for the hearing aid, in order to provide desirable acoustic output for the hearing aid users.

Regarding claims 12-13, Julstrom et al. do not clearly teach a bandpass filter array as claimed. Since providing a filterbank for the hearing device, especially for a digital hearing aid is

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very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable filterbank for the hearing aid, in order to provide desirable acoustic output for the users.

Regarding claim 14, Julstrom et al. further disclose the system for adjusting audio output, wherein the at least one acoustic transducer comprises speakers (208).

Regarding method claims 23-29, they are similar to claims 1-14 except for being couched in method terminology; such methods would be inherent when the structure is shown in the cited reference.

Response to Amendment

4. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

5. Regarding the newly added claims 38-40, and previously added (after election) claims 30-37, the examiner respectfully disagrees with the applicants. **The newly submitted claims 30-40 directed to an invention that is independent or distinct from the invention originally presented in non-elected claims (claims 15-22).** Since applicants already have received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30-40 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

For example, previously added claim 30 and 34 are including all limitations of the non-elected claims 15 and 19, and newly added claim 38 claims the limitation of "... the transmitter

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unit is adapted to automatically send the signal to the receiver without user activation", which is clearly not recited in any of the originally presented claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

7. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. Any response to this final action should be mailed to:

**Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE"), or


(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,
Crystal Park II,
2121 Crystal Drive,
Arlington, Virginia 22202**

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).
11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

February 21, 2005


SUHAN NI
PRIMARY EXAMINER